IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25-4-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION No.6034 of 2007
and
M.P.Nos.1, 2 and 4 of 2007

S.Girija .. Petitioner

Vs.

1. The Inspector of Matriculation
   Schools,
   Egmore, Chennai-8.

2. The Trustee,
   Janaki Ramachandran Education and
   Charitable Trust,
   No.80, Doraiswamy Road,
   Vadapalani, Chennai 600 026. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.R.Muthukumarasamy, S.C.
For Mr.V.Kuberan,
For M/s.Rank Associates.
For Respondent-2 : Mrs.Chitra Sampath
...

O R D E R

By consent of both the counsels, the Writ petition itself is taken up for hearing.

2. The present Writ Petition has been filed for issuance of a writ of certiorarified mandamus calling for the records of the second respondent, culminating in the order of the petitioner's termination dated 3.2.2007, quash the same and further directing the second respondent to reinstate the petitioner in the same position which the petitioner was holding on the date of termination in Janaki Ramachandran Matriculation School, at No.112, North Mada Street, Vadapalani, Chennai-600026.

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3. The short matrix of the matter is as follows. The petitioner is in services of Janaki Ramachandran Matriculation School as Vice Principal. Originally, the petitioner was appointed by the proprietor of the School, Mrs.Seetha Devi. After taking over the management of the school by the second respondent, there has been several disputes that have arisen between him and his other family members which have resulted in various court proceedings touching the management of the school. The teaching and non-teaching staff were also made subject to various problems. The staff have also filed the police complaint against the second respondent, apart from initiating legal proceedings. The petitioner was also a party to the said proceedings. While so, the Principal, the petitioner's immediate superior in the school, instructed her to open a bank account jointly along with her for safe depositing of school funds until the disputes and issues raised in the suit in C.S.No.267 of 2005 on the file of this Court is decided. The petitioner has adhered to the said direction and joined her in opening the bank account. The account was opened in her official capacity as Vice Principal. No money from the said account was withdrawn by her. Opening of the account was termed as misconduct by the second respondent and a letter dated 28.11.2006 was sent to her by the second respondent calling upon the petitioner to furnish the entire account details, failing which disciplinary action has been threatened against her.

4. It is the further case of the petitioner that she has handed over the said letter to the Principal of the school who informed her that in the course of the court proceedings, the entire details and sum deposited in the account will be handed over to the second respondent. While so, the second respondent stopped paying salary to the petitioner from November, 2006 and informed her by a letter dated 1.12.2006 that the salary is being withheld as a lien for the realisation of the alleged amounts that may be found recoverable from her. But, to her shock and surprise, the second respondent issued a letter dated 22.1.2007 purposed to be a show cause notice calling upon her to show cause as to why she should not be dismissed from service for misappropriation of funds of the school and for certain alleged activities adverse to the Trust and serious misconduct and gross insubordination. The petitioner has sent a detailed explanation to the said notice dated 29.1.2007. Immediately, upon receipt of the said reply, it is averred that without any personal hearing or enquiry, the second respondent had summarily terminated the petitioner's services by letter dated 3.2.2007 with effect from 5.2.2007. The petitioner has filed the statutory appeal before the first respondent. Originally, the petitioner filed the Writ Petition for mandamus directing the first respondent to take up the appeal dated 7.2.2007 filed by her challenging the order of

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termination dated 3.2.2007 passed by the second respondent on his file and dispose of the same as per law. But, later, the petitioner has amended the prayer which has been set out earlier.

5. The second respondent filed the affidavit along with an application to vacate the order of stay granted by this Court. In the said affidavit, it has been averred that after the demise of late P.Narayanan, former Trustee, father of the second respondent, in the year 2004, the Principal of the said school, his sister Miss Banu, joined hands with his mother Smt.Seethadevi and started claiming interests adverse to the interest of the Trust and the institution by filing legal proceedings compelling the second respondent to protect the interest and welfare of the Trust and the institution by filing legal proceedings. Since the bank account has been opened by the petitioner along with the Principal, notice was issued to the petitioner on 28.11.2006 calling upon her to furnish all the details regarding the account which has been opened by her with his sister Miss Banu. A reply has been sent by the petitioner on 8.12.2006. Not satisfied with the reply, a show cause notice was issued to her on 22.1.2007 calling upon her to submit an explanation as to why she should not be dismissed from service for various of acts of omissions and commissions. Since the reply by the petitioner dated 29.1.2007 was not satisfactory, the petitioner was terminated from service. Further, it has been averred that the principles of natural justice have been followed and an opportunity has been given to the petitioner to explain her conduct before passing the order of termination. Further, it has been stated in the said affidavit that since the petitioner has not requested for any personal hearing or enquiry, no enquiry has been conducted.

6. On this set of facts, now it has to be seen the arguments that have been advanced on the side of the petitioner as well as the second respondent.

7. Mr.R.Muthukumarasaamy, the learned senior counsel appearing for the petitioner contended as follows:-

(a) The entire proceedings initiated against the petitioner and that led to the order of termination passed against the petitioner is due to the struggle for power between the family members for the management of Trust and its school. It has cost the petitioner.

(b) The opening of the bank account jointly in the name of the Principal and Vice Principal, the petitioner herein, at the instance of the Principal, none else than the sister of the second respondent, cannot be said to be insubordination or misappropriation of funds.

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(c) Though in the show cause notice, opening of the bank account has been termed as misconduct, gross violation of duty, breach of trust besides guilty of misappropriation and siphoning of the funds of the school, but what led to the passing of the final order of termination, as could be seen from the impugned order, is that the reply to the show cause demonstrates insubordination and denial of the second respondent's right to the school funds while insisting upon payment of salaries of the teachers of the school. Thus, the cause of action for the issuance of the show cause notice has vanished while passing the final order of termination.

(d) The impugned order has been passed without any enquiry or personal hearing, which is violative of the principles of natural justice.

8. Per contra, Mrs.Chitra Sampath, the learned counsel appearing for the second respondent submitted as follows:-

(a) The petitioner has filed the Writ Petition originally for mandamus seeking direction against the first respondent for disposal of the appeal and later the prayer has been modified as one of certiorari which is not maintainable. Since the petitioner already invoked the alternative remedy by filing an appeal before the first respondent, she cannot maintain the present Writ Petition.

(b) Since the petitioner did not ask for enquiry or personal hearing, no enquiry has been conducted by the second respondent. Having failed to ask for an enquiry or personal hearing, it is not open to the petitioner to say that the second respondent has not given any opportunity to the petitioner to put forth her case by conducting enquiry or personal hearing. By referring Section 20 of the Code of Regulations for Matriculation Schools, the learned counsel further submitted that unless and otherwise, personal hearing or enquiry is sought for, there need be no enquiry.

(c) The second respondent has made out a prima facie case against the petitioner and the opening of bank account is a clear case of insubordination, misconduct and misappropriation of funds.

9. Mr.R.Muthukumarasamy, the learned senior counsel appearing for the petitioner, by way of reply has submitted as follows:-

(a) Though there is an alternative remedy available under the Regulation for filing an appeal before the first respondent and that an appeal has been preferred by the petitioner, since there is a procedural irregularity and that

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the order of the second respondent is perverse and irrational, the prayer has been amended to one of certiorari which is perfectly valid in law.

(b) Since the second respondent passed the impugned order in gross violation of the principles of natural justice, the petitioner was constrained to file the writ petition originally for mandamus, but later amended the prayer as one of certiorari.

10. I have heard Mr.R.Muthukumarasamy, the learned senior counsel appearing for the petitioner and Mrs.Chitra Sampath, the learned counsel appearing for the second respondent.

11. The first and foremost point that has to be answered in this Writ Petition is whether the Writ Petition is maintainable in view of the alternative remedy available to the petitioner and especially when the petitioner has already availed the same by filing an appeal before the first respondent. It is the case of the petitioner that the petitioner was terminated from service without any enquiry thereby violating the principles of natural justice and not in all cases, rule of exclusion of jurisdiction can be invoked saying availability of alternative remedy. The alternative remedy is a rule of discretion and not one of compulsion. In WHIRLPOOL CORPORATION v. REGISTRAR OF TRADE MARKS, MUMBAI (1998 (1) S.C.C. 1), the Apex Court has held at least in three contingencies, the High Court can exercise its jurisdiction, namely,

(i) where the writ petition seeks to enforce any of the fundamental rights;

(ii) where principles of natural justice has been violated;

(iii) When the orders have been passed wholly without jurisdiction.

12. In the case on hand, it is the case of the petitioner that there is a violation of the principles of natural justice and hence, the Writ Petition cannot be thrown out only on the ground that the petitioner can seek alternative remedy and that already the alternative remedy has been availed. The alternative remedy can never be a rule of law. Further, this Court can go into the aspect whether the petitioner has made out a case, that too a strong case, and that there exists a good ground to invoke an extraordinary jurisdiction. The Apex Court in a number of cases including the case reported in AIR 1966 S.C. 1090 (K.S. VENKATARAMAN AND COMPANY (PRIVATE) LTD v. STATE OF MADRAS) has held that Article 226 of the Constitution of India confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary

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remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted. Thus, the Writ Petition cannot be thrown out merely on the ground that alternative remedy is available to the petitioner. In this backdrop, let me see whether there is any violation of the principles natural justice in the case on hand.

13. According to the learned senior counsel, since the petitioner has disputed the allegation made against her in the show cause notice, before taking any action, the second respondent should have conducted an enquiry. On the other hand, Mrs.Chitra Sampath, the learned counsel appearing for the second respondent, contended that as per Section 20 of the Code of Regulation for Matriculation Schools in Tamil Nadu, the management has power to terminate the services of a teacher or a member of non-teaching staff without notice for any of the reasons, namely, willful negligence of duty, serious misconduct, gross insubordination, etc. Since the petitioner has been terminated for serious misconduct and gross insubordination, no notice or enquiry is needed. Further, until and otherwise personal hearing or conduct of an enquiry is sought for, the management need not conduct an enquiry or call for personal hearing. On the other hand, the learned senior counsel appearing for the petitioner contended that though personal hearing or enquiry has not been asked for by the petitioner, in view of the fact that the petitioner denied the allegations made against her in her reply, the second respondent ought to have conducted an enquiry before passing the final order of termination, especially when the second respondent has considered the reply by the petitioner to the show cause notice as insubordination.

14. As rightly pointed out by the learned senior counsel appearing for the petitioner, when the petitioner has disputed the allegations made against her in the reply to the show cause notice and sought to explain why bank account has been opened, it is all the more essential to conduct an enquiry before passing the final order of termination against a person who served in the school for more than 27 years. Further, it has to be seen that what led to the passing of the order of termination, as could be seen from such order, is that the reply to the show cause notice has been considered as insubordination. While so, all the more an opportunity should have been given to the petitioner to put forth the circumstance that led to the reply and how it has been taken as insubordination. Thus, the failure to give an opportunity to the petitioner is a gross violation of the principles of

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natural justice which requires interference by this Court under Article 226 of the Constitution of India.

15. Then, we have to see the background in which the show cause notice has been issued and which has culminated in the final order of termination and the opening of the bank account by the petitioner be termed as insubordination, etc. It is an admitted case that the father of the second respondent was running the Trust and the school. After his demise, dispute seems to have arisen between the second respondent on the one hand and his mother and his sister, the Principal of school on the other hand. Some proceedings are pending between them before this Court on the Original side and before the City Civil Court, Chennai. On this backdrop, it has to be seen whether opening of the bank account by the petitioner at the instruction of the said Miss Banu, the Principal of the school, the sister of the second respondent, is insubordination. It has been urged by the learned senior counsel appearing for petitioner that the bank account has been opened in the name of the Principal and the Vice Principal on the instruction of the Principal of the school. The opening of the account per se cannot be termed as insubordination since the said account has been opened at the instance of the Principal of the school. At best, it can be said that the petitioner is caught in the in-fight between the second respondent on the one hand and her sister, the Principal of the school on the other hand. In between their dispute, the petitioner has been made as a scapegoat. If the petitioner has refused to open the bank account, the the Principal of the school would have taken action against her for insubordination.

16. It has to be seen further that though the show cause notice refers about the misappropriation of funds and serious misconduct, the order of termination does not refer about any misappropriation of funds or misconduct. The order of termination only says that the reply demonstrates a clear case of insubordination. If there is an allegation of insubordination, which led to the show cause notice, then the order of termination shall say what is the insubordination. But, the order of termination reads that the reply is a clear case of insubordination. In case if the reply that has been given by the petitioner contains certain averment which is insubordination, then the petitioner shall be given an opportunity to explain why such reply has been given. But, the reply itself has been taken as an insubordination. Thus, it is crystal clear that though the insubordination has been cited as a cause that led to issuance of the show cause notice in the final order of termination that has been given a go-bye and the reply to the show cause notice alone has been termed as insubordination. Thus, the cause of action existed before the issuance of show cause notice, which led to such notice, does not seem to be the reason for the order of termination. Though

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the persuasive argument of Mr.R.Muthukumarasamy, the learned senior counsel appearing for the petitioner is resisted by Mrs.Chitra Sampath, the learned counsel appearing for the second respondent, through her efficient and effective argument, I am unable to uphold the impugned order of the second respondent.

17. For the foregoing discussions made above and the reasonings set out by me earlier, I am constrained to come to the following irresistible conslusion:-

(a) First of all, it has to be seen that there is already dispute between the second respondent on the one hand and his mother and sister on the other hand relating to the Trust and running of the school. In the said backdrop, the petitioner was caught between them which led to the entire action against her.

(b) Opening of an account by the petitioner, the Vice Principal of the school, jointly with the Principal of the school, at her instance cannot be considered as misconduct or insubordination.

(c) It is not the case of the second respondent that the petitioner misappropriated the funds by opening the bank account. Though in the show cause notice, it is said about misappropriation of funds, the show cause notice does not state what is misappropriation and and how much amount has been misappropriated by the petitioner. Furthermore, the order of termination does not reveal or does not state that the petitioner has been terminated in view of misappropriation of funds. Misappropriation is not the ground on which the order of termination has been passed.

(d) Though the show cause notice refers about several charges including insubordination, misconduct, misappropriation, etc., the order of termination reveals that the reply of the petitioner alone has been taken as insubordination, which led to the passing of the impugned order of termination.

(e) In view of the above referred facts and in the background of the matter, it would have been more appropriate for the second respondent that before passing the impugned order of termination, an opportunity should have been given to the petitioner by conducting an enquiry or holding personal hearing. The failure to do so is violative of the principles of natural justice which requires consideration by this Court.

(f) In view of the extreme action taken by the second respondent in terminating the petitioner who has put in more than 27 years of service, the petitioner should have been given an opportunity to put forth her case by conducting an enquiry. The failure to do so is totally unjust and violative of all canons of law. To throw her out for merely opening an account at the instance of the Principal of the school is totally uncalled for and unjust.

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18. In fine, I am constrained to set aside the order of the second respondent dated 3.2.2007 terminating the services of the petitioner from Janaki Ramachandran Matriculation School, Vadapalani. The second respondent is directed to reinstate the petitioner forthwith. It is open to the second respondent, if so desire, to pass appropriate orders after conducting an enquiry and after personal hearing of the petitioner.

19. In the result, the Writ Petition stands allowed as indicated above. Consequently, the connected M.Ps. are closed. However, there will be no order as to costs.

dpp

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector of Matriculation Schools,
Egmore, Chennai-8.

2. The Trustee,
Janaki Ramachandran Education and
Charitable Trust,
No.80, Doraiswamy Road,
Vadapalani, Chennai 600 026.

+ 1 cc to M/s. Rank Associates SR No.27958

+ 1 cc to M/s. Citra Sampath, Advocate, SR No.28072

SSK(CO)
SR/9.5.2007

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